

ASSET DISPOSALS BY THE STATES OF JERSEY DURING 2009

REPORT BY THE COMPTROLLER & AUDITOR GENERAL

NOVEMBER 2010

*Asset disposals by the States of Jersey during 2009
Report by the Comptroller & Auditor General
November 2010*

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SECTION ONE – INTRODUCTION

1. Following my normal practice, towards the end of 2008 I published a consultation paper containing proposals on the programme of work which I intended to undertake as Comptroller & Auditor General. I included within my proposal work intended to review the disposal by the States of significant assets. This report sets out the conclusions which I have reached following a review of the disposals by the States during 2009 of various assets. The terms of reference for this review are set out in Appendix One.
2. For the purpose of this review, I excluded all assets which were sold for an amount below £25,000 with the result that all of the disposals that were covered by the review were interests of various sorts in land and buildings and may be grouped under three principal headings:
 - (1) Sales by Jersey Property Holdings;
 - (2) Sales of houses by the Housing Department under the Social Housing Property Plan 2007 – 2016; and
 - (3) Sales of houses under the 'Jersey Homebuy' scheme.
3. In the course of this review, I sought to answer three principal questions:
 - (1) Were the sales effected in accordance with properly approved policies of the States?
 - (2) Were the sales effected at proper prices?
 - (3) Were all proper approvals for the sales obtained?
4. For this purpose, I regarded 'proper values' as being the best achievable market value within the constraints imposed by policies approved by the States.
5. In accordance with my normal practice, I provided copies of a draft of this report to all of those people who had provided me with information in the course of the review together with others who are mentioned in the course of this report. A number of these people did not make any comments on the draft. In all other cases, I have carefully

considered the comments that were made to me and have revised this report to the extent that I thought appropriate.

6. A list of all those people who provided information in the course of this review is set out in Appendix Two.

SECTION TWO – SUMMARY OF FINDINGS

7. My findings can be summarised in the following way.
8. I have successfully concluded my review on sales by Jersey Property Holdings and by the Housing Department under the Social Housing Plan and have no comments to make on these transactions.
9. As far as concerns transactions relating to the proposed Jersey Homebuy scheme, in my view:
 - (1) Although it is clear that the States were in favour of the Jersey Homebuy scheme in principle, it is not clear that the trial of the proposed Jersey Homebuy scheme was properly approved by the States. In part this was due to a failure to specify in detail what the approval process would be.
 - (2) The fact that on 23 September 2008 the Planning and Environment Department issued a News Release announcing that the trial had been approved suggests that senior officials in the Department believed that the trial had indeed been approved¹.
 - (3) There is no doubt that, at the time the trial was proposed, there was no detailed scheme for its implementation. This is clear from the Sub-Panel's comments on the original Proposition and was accepted by the Planning and Environment Minister.
 - (4) One consequence of these doubts and uncertainties was that implementation of the trial was rendered problematic. Good administration begins with clear rules for implementation.
 - (5) These problems especially affected agreement of the price at which the properties were acquired from the developer and then sold to Jersey Homebuy purchasers. In any event, the price paid for the properties fell outside the

¹ The News Release was approved by the Chairman of the Housing Scrutiny Sub-Panel together with the Planning and Environment Minister and the Housing Minister.

parameters of the policy that was proposed to and perhaps approved by the States².

10. I do not make detailed recommendations on how these difficulties may be avoided in future save that the appropriate departments and the States should consider how best:

- (1) the uncertainties over the States' approval of the trial and policy should be resolved;
- (2) the detailed arrangements for implementation of the Jersey Homebuy scheme should be settled;
- (3) the arrangements for providing central oversight of the States' property transactions and professional advice to the Treasury and Resources Minister on decisions in connection with Standing Order 168³ should be improved.

² The amount of the discount against the open market first time buyer value was higher than that proposed to apply to the initial site.

³ The Standing Order of the States which governs the process by which property transactions are reviewed by the Treasury and Resources Minister and then reported to the States.

SECTION THREE – DISPOSALS BY JERSEY PROPERTY HOLDINGS

11. I have been able to satisfy myself that the assets disposals carried out by Jersey Property Holdings as listed in Appendix Two:

- (1) Were effected in accordance with properly approved policies of the States;
- (2) Were effected at proper values; and
- (3) that all proper approvals for the sales were obtained.

SECTION FOUR – SALES UNDER THE SOCIAL HOUSING PLAN 2007-2016

12. I have been able to satisfy myself that the sales made by the Housing Department under the Social Housing Plan 2007-2016:

- (1) the sales were effected in accordance with properly approved policies of the States;
- (2) the sales were effected at proper values; and
- (3) that all proper approvals for the sales were obtained.

SECTION FIVE – JERSEY HOMEBUY SALES

Introduction

13. In the following sections of the report, I will consider the sales made by the States during 2009 under the 'Jersey Homebuy' scheme which consisted of 46 properties on a single estate: at La Providence. In Section Six, I will consider whether the sales were made in accordance with the properly approved policies of the States; in Section Seven, I will consider whether the sales were agreed at appropriate prices; and in Section Eight I will consider whether all necessary approvals were obtained.

SECTION SIX – JERSEY HOMEBUY – APPROVED POLICIES

Introduction

14. The 46 properties at La Providence were sold in accordance with the proposed 'Jersey Homebuy' Scheme. To consider whether the properties were sold in accordance with the States' approved policy I had therefore to consider what was the approved policy.

Consideration of the proposed policy

15. On 29 January 2008 the Minister for Planning and Environment presented to the States a White Paper for consultation proposing a new form of 'shared equity' housing under the name 'Jersey Homebuy'.⁴ The press release announcing the consultation described the key proposals in the following way:

- "- Jersey Homebuy properties would be available to qualifying first time buyers at a discounted rate, initially set at 35%*
- A system of financial means testing, known as a gateway, would be set up to identify qualifying first time buyers. This would be managed by the Housing Department in a similar way to its existing waiting list for States rental accommodation*
- Buyers would purchase 100% of the property for just 65% of the first time buyer market value. If they sell it on, the sale would have to be to a first time buyer who would then pay 100% of the prevailing first time buyer value. The seller would take away 65% of the sale proceeds and the other 35% would be paid to a not for profit body that would reinvest the money into a more affordable housing provision*
- A not for profit recognised provider of affordable housing would receive and administer the remaining sales proceeds which would be reinvested into other affordable housing*
- The Island Plan 2002 is amended so Jersey Homebuy can be applied to a proportion of the properties to be built on the three remaining sites allocated for affordable housing in the Island Plan 2002 and any future sites allocated for affordable housing. The Minister for Planning and Environment would determine what proportion of those properties are available as Jersey Homebuy and social rented housing based on evidence from the housing needs survey (note in the Island Plan 2002 these 'affordable housing sites are referred to as 'H2 sites' "*

16. The White Paper gave the following example of the way in which Jersey Homebuy could operate in practice:

⁴ RC7/2008.

“Applicant T has an income of £900 p.w. (£46,800 p.a.) and having been means tested through the gateway is approved as being eligible for intermediate housing.

The home he wishes to buy is valued at £400,000 and being a unit categorized for intermediate housing is subject to a 35% discount on the first-time buyer value, bringing the price down to £260,000.

T buys the property outright, but only pays 65% of the first time buyer value at this stage. Over 25 years, T’s monthly mortgage repayments on a loan of £260,000⁵ will be (at current rates) £1,675 per month, which reduces significantly after allowing for mortgage interest tax relief.

Say, after 10 years, T decides to sell the property, T must sell to a recognised first-time buyer who will pay 100% of the prevailing first-time buyer value. T receives 65% of the proceeds from the sale, minus the outstanding mortgage principal and fees; the authorized body holding the second charge receives the other 35% of the sale proceeds.”⁶

17. The consultation period ended on 26 March 2008.
18. During March, the Housing Sub-Panel of the Health, Social Security and Housing Scrutiny Panel responded to the consultation on Jersey Homebuy and reported that it had difficulty in assessing the merits of the concept owing to the lack of detail in the proposal. The Sub-Panel concluded that:

“To summarise, the Sub-Panel considers that there is insufficient detail presented in the consultation document to enable it to be evaluated at a satisfactory level. There appear to be so many areas of uncertainty that it is impossible to draw any positive conclusions, whereas a number of substantial concerns arise which are not addressed.”⁷

19. Subsequently, on 21 May 2008 the Minister for Planning and Environment submitted a proposition to amend Island Plan policy H1 to include provision for ‘Jersey Homebuy Housing’.⁸ The effect of the proposal was that Island Plan Policy H1 would be amended so that ‘Jersey Homebuy housing’ would be included within the definition of Category A Housing for the remaining H2 housing sites. The proposition did not seek approval for any particular scheme or any particular transactions; and it was proposed that the detailed

⁵ A loan of this amount would have represented a multiple of 5.55 times the assumed income of Applicant T.

⁶ RC 7/2008.

⁷ This extract is taken from P74/2008-Comments.

⁸ P74/2008.

specification of a scheme would be set out by the Minister for Planning and Environment in conjunction with the Minister for Housing in Supplementary Planning Guidance.⁹

20. On 9 July 2008, the Health, Social Security and Housing Scrutiny Panel published its comments on the proposition laid by the Minister for Planning and Environment.¹⁰ The document ended with the following paragraph:

*“While the sub-panel is keen to support initiatives to extend home ownership, it is clear that much more work needs to be done before this policy can be presented to the States as fully formed and ready for implementation. It is noted that some properties on the specified sites will be ready for occupation well before the end of the year and potential buyers are already seeking to establish a place on the Homebuy list in preference to the first time buyer list, unfortunately some will be disappointed. The haste to bring this proposition before the assembly without fully elaborating the various parts of the mechanism is perhaps understandable given the demand for affordable housing but may not represent the best approach to sound policy making. However, provided the assurances given by both Ministers (referred to in points 15-16 above) are acceptable to the Assembly, the Housing Sub-Panel is willing to work with the two departments to bring Jersey Homebuy back to the States as a practical working model as soon as possible”.*¹¹

21. The assurances mentioned in the above extract were reported in the following way:

“15 The Ministers for Planning and Environment and Housing offered an unconditional undertaking to the Sub-Panel that if the principle of Jersey Homebuy was accepted by the States, they would commit to submitting the detailed plans for Scrutiny approval before taking any further action.

16 Scrutiny could thus reserve sign-off on the proposals until it was satisfied with all the details that remain to be developed, to include the Gateway mechanism, legal arrangements, allocation procedures etc.”

22. The proposition was duly debated by the States on 10 July 2008.

23. In the course of introducing the debate, the Minister for Planning and Environment made the following observations:

“. . . the proposition before you is only about amending the Island Plan to make provision for the principle of Homebuy as a recognised form of social housing in the Island Plan. It is not about the fine detail of the scheme. To be absolutely clear, there are many fine details about the scheme that need to be agreed with the Housing Scrutiny Sub-Panel if the House approves this proposition. I have

⁹ Paragraph A2.2. of Appendix 2 to P74/2008.

¹⁰ P74/2008 – Comments.

¹¹ Last paragraph, page 2 of P74/2008 – Comments.

given an absolutely clear commitment that we will not proceed with the scheme until scrutiny is happy with the mechanisms of operation. This is simply about amending the existing Island Plan to establish the principle that we can add Homebuy shared equity as an approved type of social housing. I am very pleased that the Chairman of the Housing Scrutiny Panel has informed members that scrutiny will be supporting the principle of Homebuy subject to my undertaking to finalise the details with the Scrutiny Sub-Panel. To be absolutely clear, Deputy Power, as Chairman of the Sub-Panel has informed me that despite the wording of the final sentence of the Panel's comments published yesterday, it is not their recommendation that the matter be brought back to the States, but that the details of the scheme be agreed with scrutiny prior to implementation of the scheme."¹²

24. The Minister for Planning and Environment went on to say:

"Subject to the Scrutiny Sub-Panel's agreement, I propose to form a working group comprising, planning, housing and scrutiny to work on finalising the details of the operation of the scheme. Moreover, once the scheme is in operation, I would intend to keep the group going to review and adapt the mechanisms in the light of operational experience".

25. The proposition was approved.

¹² In the course of this review I have been given to understand that the Panel had not made a formal decision to accept that any detailed scheme for Jersey Homebuy transactions should not be referred back to the Assembly.

Subsequent exchanges with the Sub-Panel

Introduction

26. It was obviously expected that there would be exchanges between the Planning and Environment Department and the Scrutiny Sub-Panel. However, the proposal that the details of the proposed scheme should be agreed with the Housing Sub-Panel was not normal.
27. Usually, scrutiny panels examine policy proposals published by Ministers with a view to reporting on the strengths and weaknesses of those proposals. The States would then consider whether to approve Ministers' proposals in the light of the scrutiny panels' comments. In normal circumstances panels would not consider whether a particular proposal has reached a form in which it is appropriate for detailed implementation and would not be expected to approve implementation. To ensure that the panels' limited function is understood and their activity well focussed, any review would first be defined by terms of reference specifying the subject to be considered and the intended outcome.
28. In the case of the Jersey Homebuy proposals, the Housing Sub-Panel had prepared terms of reference for its review of those proposals but they had been exhausted by the publication of comments on the White Paper published in January 2008. The original terms of reference did not envisage that the Sub-Panel would approve any draft scheme for implementation: even if only as a trial. This was not surprising as this is not the normal function of a panel. Nor were the original terms of reference re-considered when the Minister proposed that the Sub-Panel should in some way act as a mechanism to approve the draft scheme.
29. Consequently the exchanges between the members of the Sub-Panel and the two Departments involved were not regarded as formal scrutiny meetings and appear not to have been formally recorded. As a result it has not been possible to prepare a precise record of what took place or, indeed, of whatever conclusions were reached by the Sub-Panel.

Exchanges

30. The Sub-Panel received some papers from the Housing Department on 22 July 2008 showing work in progress on the draft Jersey Homebuy scheme.

31. An enquiry from the Planning and Environment Minister on 12 August 2008 about the possibility of a further meeting led the Sub-Panel to ask the Housing Department whether further information was available.
32. It was agreed that a meeting should take place on 14 August 2008 in preparation for which the Housing Department prepared a briefing note which included further examples of the values that might underlie the proposed Homebuy transactions. These examples indicated first time buyer prices of £415,700 and £436,652 for two units. The discounted prices for these two units (calculated at 65%) would then have been £270,205 or £283,824.¹³
33. The Sub-Panel considered this briefing note at a meeting on 26 August 2008, following which a paper was prepared setting out the Sub-Panel's comments on the Housing Department's proposals.¹⁴

“Following the debate the Sub-Panel received some papers from the Housing Department on 22 July showing work in progress on aspects of the mechanism. An enquiry from the Planning Minister on 12 August about the possibility of a further meeting led to the Sub-Panel making further contact with Housing to enquire whether more information was now available; an updated package of information was received by the Scrutiny Office on 14 August. Members of the Sub-Panel met to discuss progress so far on 26 August, this being the first opportunity owing to holiday and other commitments. Sub-Panel members have also met representatives of Dandara Ltd and local mortgage advisers.

It should be clear from the above that members have many concerns about the lack of clarity in documentation received, exacerbated by the apparent desire to rush the scheme through without allowing time for proper Scrutiny. The Sub-Panel has no objections in principle to the Homebuy concept, but it considers that more work is needed . . . before the scheme could be considered ready for launch; any attempt to proceed without first attending to these matters would be considered not only irresponsible but also in breach of the Minister's commitment to the House.”

34. There appears to have been a meeting on 17 September 2008 convened at the request of the Planning and Environment Minister and attended by members of the Sub-

¹³ If these prices were inserted in the example set out in the White Paper originally published in January 2008, the assumed income multiple would have been 5.8 or 6.1.

¹⁴ I understand that this paper was available by 11 September 2008.

Panel. In anticipation of that meeting, the Housing Department prepared a note¹⁵ of the Department's reactions to the Sub-Panel's comments on the Department's proposals.

Letter dated 18 September 2008

35. Following the meeting, on 18 September 2008, the Chairman of the Housing Sub-Panel wrote to the Minister for Planning and Environment in which he confirmed the Sub-Panel's position regarding 'Jersey Homebuy'. Whilst the letter confirmed that the Sub-Panel had agreed that "it would be appropriate to trial the 'Jersey Homebuy' process on the remaining H2 sites in the 2002 Island Plan as proposed", the agreement was subject to the Sub-Panel receiving:

- (1) Written confirmation that temporary measures against flooding on the Goose Green Marsh site had been fully approved by the Department's building control section
- (2) Written confirmation that there were no remaining concerns about insurability of properties on that site
- (3) Suitable evidence from the Housing Department demonstrating its compliance with any applicable legislation in respect of its intention to operate as a not for profit body for 'Jersey Homebuy'.

36. The letter continued with the following two paragraphs:

"As you know, another of the Sub-Panel's concerns related to the possibility for unfair treatment of family members who may inherit the property from the initial purchaser in due course. It is understood that the scheme will require repayment of the 35% discount at the (first time buyer) market value pertaining at the time. However, members were reassured to hear that discretion may be applied by the Minister for Planning and Environment in individual cases in respect of the ability for heirs to occupy inherited family homes where first time buyer restrictions might otherwise preclude this.

"The Sub-Panel is also pleased to hear that it is intended to vary the financial parameters of the Gateway in future according to the type of properties becoming available under Jersey Homebuy as it believes it is important that the scheme should be able to offer support to those on lower incomes. It is felt that the interest generated by the initial phase will almost certainly create demand for a wider application of the scheme in future".

¹⁵ Also dated 17 September 2008.

37. In other words, the Sub-Panel's agreement to a trial of the Jersey Homebuy scheme depended on a number of conditions being satisfied. I therefore invited the Scrutiny Officers who had supported the Housing Sub-Panel in this matter to provide me with any written evidence demonstrating that the Housing Sub-Panel's conditions had been satisfied. In fact, only one piece of written evidence could be found.

Condition 1: water drainage

38. On 22 September 2008, a senior Building Control Surveyor within the Planning and Environment Department wrote to a Scrutiny Officer, to confirm the adequacy of the rain water drainage arrangements mentioned in the Housing Sub-Panel's letter. The letter ended with the following two paragraphs:

"For your information I have made frequent site visits over the past fourteen months for the purposes of the relevant bye law inspections and I have not evidenced any adverse surface water issues. More latterly, as the first phase of housing has been nearing completion and 'hard' landscaping has been initiated, I have witnessed the construction of the service water attenuation tank.

"It has been noted that during August there were several spills after persistent rainfall and I would confirm that the rain water system appeared to be functioning satisfactorily for by-law purposes with no noticeable 'ponding' of standing water remaining on site at the time of my visit. With this in mind I am satisfied that the temporary system for rain water disposal is fit for purpose".

39. This letter satisfied the first of the three conditions specified by the Housing Sub-Panel.

Condition 2: Not for profit body status

40. The Law Officers appear to have provided advice to the Housing Department at the latest by August 2008 that the Housing Department could act in the way proposed.¹⁶ However the Housing Department had undertaken to obtain further advice. This appears from the Department's response to the Sub-Panel's detailed comments:

"[Sub-Panel comment] . . . the Housing Department intends to act as the 'Not for Profit' Body in the purchase of 46 units from Dandara Ltd . . . the Sub-Panel has serious concerns about this proposal. Is this role for the Housing Department in compliance with the Public Finance Law and can the Department confirm this?"

¹⁶ This appears from the Position Paper prepared by the Housing Department and dated 14 August 2008 to which I have already referred and which refers to advice from the Law Officers' Department. It is not clear when and in what form that advice was received and I note that the Housing Sub-Panel asked for suitable confirmation of the advice. .

*[Department's response] The States are not a profit making body and the advice of the Law Officers' Department has been sought in respect of the proposals being consistent with the Public Finances Law. Advice provided is that as the states is not a profit making organisation with shareholders who take dividends it does appear to be consistent with the Law. However, the Housing Department has undertaken to write formally to the Law Officers Department to gain definitive written advice on the matter.*¹⁷

41. I presume that this is the confirmation to which the letter dated 18 September 2008 refers.
42. I have not been able to find any correspondence that satisfies this condition and consider that it is most unlikely that the expected formal confirmation could have been available from the Law Officers' Department
43. Thus there is no evidence that the second of the three conditions was satisfied.

Condition 3: Insurability

44. I have not been able to find any formal confirmation that this point was considered.
45. It has been put to me that this condition was in substance the same as the water drainage condition. In other words, it was suggested that satisfaction of that condition also satisfied the insurability condition.
46. I am not persuaded that this was the case. The insurability condition appears to have originated with comments included in the Sub-Panel's paper dated 11 September 2008:

"It is known that until very recently there were serious concerns about the insurability of properties at Goose Green Marsh (La Providence) owing to known flooding risks. While it is understood that these have been resolved between Dandara and underwriters, it is not known what level of protection will extend to purchasers, and whether there is any risk of financial liability to the NPB [not for profit body] (i.e. Housing) for any future flooding; particularly as it is now believed that properties may be released for sale before the developer's obligations regarding construction of a pumping station and attenuation tanks have been met. The Sub-Panel would like to see a full statement from the developers of comprehensive insurance fully underwritten against flood and consequential loss and a confirmation from the Planning Department that any temporary measures to offset the works to complete the occupation process meet with the requirements of the Building Control section of the Department."

¹⁷ Housing Department paper dated 17 September 2008.

47. From this it is clear that the Sub-Panel was contemplating two separate confirmations.

48. There is no evidence that this condition was satisfied.

Other exchanges

49. In the absence of written evidence that the conditions specified by the Housing Sub-Panel had been satisfied, I asked the relevant Scrutiny Officer whether there had been any further oral exchanges between the Scrutiny Office and the Department for Planning and Environment in which the Sub-Panel's remaining conditions might have been satisfied, albeit orally. I understand that there were no such oral exchanges.

Working group

50. I have examined the evidence for the meetings of the working group established by the Planning and Environment Minister (and mentioned in his speech to the Assembly). This group met on two occasions and considered a number of papers. It has not met since 2008¹⁸. Its deliberations do not appear germane to the issues discussed in this report.

¹⁸ Indeed, notwithstanding the Minister's statement that 'once the scheme is in operation, I would intend to keep the group going to review and adapt the mechanisms in the light of operational experience' (States Assembly Hansard 10 July 2008) the group was discontinued and members thanked for their contribution by letter on 3 October 2008.

News release

51. On 23 September 2008, the Planning and Environment Department issued a News Release which announced:

“Deputy Power’s Housing Scrutiny Sub-Panel, the States members Working Group and the Ministers for Planning and Environment and Housing have finalised the details of the Jersey Homebuy scheme.”

52. This Release quoted Deputy Power:

“Members agreed that it would be appropriate to trial the Jersey Homebuy process on the remaining sites from the 2002 Island Plan as proposed.”

53. The words quoted are the words that were used in Deputy Power’s letter dated 18 September 2008 and which I have already quoted. In that letter, they were subject to the conditions that I have also quoted above. These conditions were not mentioned in the Department’s News Release.

54. It has been put to me that by agreeing to the quotation in the News Release, the Sub-Panel in effect had agreed to the commencement of the trial of Jersey Homebuy. I have not been able to find any record of a decision by the Sub-Panel to this effect.¹⁹ Nor have I been able to find any decision of the Sub-Panel confirming that the conditions set out in the letter dated 18 September 2008 had been satisfied.²⁰

55. The fact that the News Release was issued by the Planning and Environment Department suggests that senior officials in the Department believed that the trial had indeed been approved.²¹

¹⁹ In fact, members of the Sub-Panel have told me that the draft News Release was not circulated to them for agreement.

²⁰ Officials in the Planning and Environment Department consider that they understood that the Sub-Panel had approved the News Release and that the Department was therefore justified in believing that commencement of the trial had also been approved.

²¹ The News Release was approved by the Chairman of the Housing Scrutiny Sub-Panel together with the Planning and Environment Minister and the Housing Minister.

Commentary

56. Accordingly, it appears to me that:

- (1) The Planning and Environment Minister gave an undertaking to the States Assembly that the trial of the 'Jersey Homebuy' scheme would not go ahead unless the Sub-Panel gave its approval.
- (2) The Housing Sub-Panel's approval of the trial of the 'Jersey Homebuy' scheme was subject to a number of conditions set out in the letter dated 18 September 2008.
- (3) As far as I have been able to establish, two of these conditions were not satisfied.
- (4) As a result, it cannot be said that the Sub-Panel had given its approval.
- (5) Thus, it cannot be said that the trial of the 'Jersey Homebuy' scheme was approved by means of the process on the basis of which the States Assembly approved a revision of the Island Plan 2002²².

57. In short, if the trial of the proposed Jersey Homebuy scheme depended upon approval by the Sub-Panel, the trial should not have gone ahead.

58. However, the fact remains that on 23 September 2008 the Planning and Environment department issued a News Release announcing that the trial had been approved. This suggests that senior officials in the Department believed that the trial had indeed been approved.

59. The difficulty which arose appears to have sprung from a distortion of the States' normal processes. As I have explained, it is not normal for a Scrutiny Panel to be asked to give approval to a scheme. Because it is not normal, the Scrutiny Panels' terms of reference do not provide for such an eventuality, and their working practices are not necessarily appropriate. I intend no criticism in making these comments: my point is that such

²² Indeed, as far as I have been able to discover, the proposed policy was not formally approved by any process apart from the flawed process involving Scrutiny which I have described. For example, there appears to be no Ministerial Decision recording ministerial approval. This is corroborated by a memorandum dated 18 June 2009 from the Treasury and Resources Minister which notes that there is no 'policy signed off by . . . both Housing and Planning (irrespective of whether it's been 'approved' by Scrutiny)'.

approval is not a part of their normal function. In my view, it was unwise to use this approach and it should not be used again..

60. It might have been wise if the Sub-Panel had met to consider the responses from the Planning and Environment Department with a view to confirming formally that the conditions set out in the letter dated 18 September 2008 had been satisfied.

61. It might also have been wise for the Department to request formal confirmation that the conditions had been satisfied and that the Panel could be regarded as having approved the trial of 'Jersey Homebuy'. This was not done.

Conclusion

62. Although it is clear that the States were in favour of the Jersey Homebuy scheme in principle, it is not clear that the trial of the proposed Jersey Homebuy scheme was properly approved by the States.

SECTION SEVEN – JERSEY HOMEBUY – PROPER VALUES

Introduction

63. As I have described, the 46 properties at La Providence were bought by the States from the company which had developed them and then sold to applicants who had been cleared by the Gateway process²³. The prices for both the purchase and the sale were the same. I have therefore considered two questions:

- (1) were the properties sold at market values in accordance with the proposed Jersey Homebuy policy and
- (2) were the properties bought at an appropriate market price?

²³ I.e. the process by which applicants were vetted to ensure that they were within the parameters of the scheme.

Were the properties sold at appropriate prices?

64. On 26 April 2009, the Assistant Housing Minister issued the following statement²⁴:

"I am pleased to announce that the Housing Department has come to an agreement after negotiations with the developer Dandara Limited to purchase 46 houses immediately at La Providence (Goose Green) St Lawrence for inclusion in the States approved Homebuy proposition brought forward by Senator Cohen last year (P74/2008).

I have, with the Housing Department's Chief Officer, Ian Gallichan, agreed an average price of £260,000 each or £11,960,000 for the 46 houses. This represents a 42% discount on the fair market price and represents a saving of nearly £8,700,000 on the open market value of £20,621,000, or the current sales value of £450,000 each. This saving of £8,700,000 will be used as a bond by the Housing Department to invest in further Homebuy schemes.

69 deserving applicants have qualified under the Housing Department's eligibility and Gateway scheme, so the Housing Department proposes to carry out, in conjunction with the Greffier of the States, a carefully supervised lottery to pick the 46 applicants very soon.

It is hoped that the homes will be available for occupancy by the end of June. The department has written to all 69 applicants on Friday notifying them of this development."

65. Thus the consideration received by the States consisted of two elements:

- (1) cash consideration equal to a proportion of the first time buyer value of the properties; and
- (2) an entitlement to receive a further proportion of the first time buyer value of the properties whenever title to each of the properties was subsequently transferred.

66. I have considered three questions:

- (1) were the prices for the properties determined in accordance with proper valuations;
- (2) were the arrangements for the deferred element of the consideration appropriate; and

²⁴ This statement was issued by the Assistant Minister and not through normal communications channels. For example, it does not contain any contact details for the States' Communications Department or the Housing Department.

- (3) were the proportions of each element of the consideration determined in accordance with the proposed 'Jersey Homebuy' policy.

Proper consideration - valuations

67. The proposed 'Jersey Homebuy' scheme envisaged that properties would be sold to qualifying first time buyers at a discounted price of 65% of the first time buyer market value. The assessment of these values in respect of the properties at La Providence was described in an answer given in the States Assembly by the Housing Assistant Minister:

"At the outset, could I point out that the Housing Department inherited the Homebuy Plan from the Minister for Planning and Environment. The 46 homes of La Providence were valued by an independent member of the Royal Institute of Chartered Surveyors using his experience of the local market. That was in the manner approved by the previous Health, Social Security and Housing Scrutiny sub-panel of which I was chair. These values are shown in R68/2009 in the Appendix. These values were then initially discounted by the 35% deferred payment as set out in the Minister for Planning and Environment's Homebuy proposition. This resulted in an indicative purchase price of between £283,000 and £302,000. During the period between the Minister for Planning and Environment's proposition and delivery of the scheme by the Housing Department, bank lending criteria radically changed. Financial modelling indicated by the Housing Department indicated that Homebuy prices had to come down to somewhere between £255,000 and £265,000. The Housing Department, including myself and the senior officers of the Housing Department, re-approached the developer, Dandara, and the result of that is that the developer agreed in March of this year to reduce the price of the homes to a range between £255,000 and £265,000 which indicated a discount of between 40 and 44% on the market value".²⁵

68. In a supplementary question the Assistant Minister was asked whether he believed it to be realistic to obtain just one valuation. The Assistant Minister responded:

"There were two independent valuations carried out. One by the Chartered Surveyor instructed by the Housing Department and one by the developer, Dandara, and there was not much difference between the two valuations."

69. I obtained a copy of one valuation and confirmed that the property sales took place at values consistent with that valuation. This valuation was carried out by independent professional valuers. However that valuation was carried out in November 2008 and there

²⁵ States Assembly: Hansard for 13 July 2009.

was reason to believe that between that date and the dates on which the transactions took place, there had been a fall in market values²⁶.

70. The second valuation consisted of a list of prices which had been provided by the developer of the estate. It thus appears not to have been an independent valuation (i.e. it was a valuation made by a developer which would be a party to the sale of the properties concerned).

71. As for the adjustment to the valuations to take account of the changes in banking criteria, I have confirmed that banks appear to have become more restrictive in lending decisions. Whereas the example quoted in the White Paper issued in January 2008²⁷ assumed a lending multiple of 5.5 times the assumed income of the applicant, I understand that by 2009 banks were not prepared to consider multiples of more than 5. As a result, many applicants with an income of between £40,000 and £60,000 would not have been able to borrow sufficient money to buy a Jersey Homebuy property at La Providence assuming that any deferred payment was limited to 35% of the first time buyer value. This problem was exacerbated by the fact that the first time buyer values of the properties at La Providence fell outside the values assumed in the sample transaction included in the White Paper published in January 2008 which I have reproduced in a foregoing section of this report as can be seen from the following table:

	<i>As published in White Paper</i>	<i>As revised – for lending criteria</i>	<i>As revised – for lending criteria and FTB value</i>
First Time Buyer value (FTB)	£400,000	£400,000	£425,000
FTB discounted by 35%	£260,000	£260,000	£276,250
Income multiple assumed	5.5	5	5
Maximum loan available assuming:			
Highest income assumed (£60,000)	£330,000	£300,000	£300,000
Lowest income assumed (£40,000)	£220,000	£200,000	£200,000
Necessary income to borrow enough money for assumed property	£47,272	£52,000	£55,250

²⁶ In a memorandum to the Minister for Treasury and Resources dated 11 June 2009, the Director of Jersey Property Holdings indicated that advice had been received that the fall in market values had been of the order of 5%.

²⁷ RC7/2008.

72. This table shows that the effect of the change in bank lending criteria and the fact that properties at La Providence were valued at amounts higher than were assumed in the White Paper narrowed the range of people who might be able to borrow sufficient money to buy at the values discounted in accordance with the proposed policy.

73. Thus some adjustment to the financial assumptions underlying the proposed Jersey Homebuy scheme was necessary if the properties at La Providence were to be used to trial the scheme²⁸.

74. However, it does not automatically follow that it was correct simply to adjust the amount of the deferred payment as the Assistant Housing Minister suggested since it would be reasonable to expect that a restriction on bank lending would have an impact on the price that purchasers could afford to pay. There is evidence to support the contention that the market values of three bedroom houses were falling at this time.

75. On 12 August 2009, the Statistics Unit published the Jersey House Price Index for the second quarter of 2009 which reported the following information for the mean prices of three bedroom houses:

<i>£'000</i>	<i>Q1</i>	<i>Q2</i>	<i>Q3</i>	<i>Q4</i>
2007	402	417	449	470
2008	510	506	541	524
2009	528	516		

76. In other words, there had been a general fall in values of three bedroom houses of just under 5% from quarter 3 of 2008 to quarter 2 of 2009.

77. As far as I am aware, it is the case that the developer of La Providence did not reduce the prices at which it was prepared to sell the houses at La Providence, but I have

²⁸ This can be demonstrated by inserting the revised borrowing limits in the example quoted in the White Paper published in January 2008. Using a multiple of 5, Applicant T would have been able to borrow approximately £235,000. When discounted at 35%, the first time buyer values for the properties at La Providence suggested Jersey Homebuy prices of £283,000 to £302,000.

established that between October 2008 and June 2009 few sales of properties at La Providence were recorded by the Judicial Greffe's Registrar of Deeds.²⁹

78. In short, the changes in market conditions necessitated some reconsideration of the financial assumptions underlying the proposed Jersey Homebuy scheme and it may have been appropriate for these changes merely to have affected the amount of the deferred payment (i.e. the implicit discount of the Jersey Homebuy price compared with the assumed market valuation). There is however a case for suggesting that the assumed market valuation should also have been reconsidered.³⁰

79. There may also have been a case for questioning whether the properties at La Providence were suitable for inclusion in the proposed Jersey Homebuy scheme.

Proper consideration – deferred element

80. As for the States' entitlement to receive further payments on subsequent transfer of title to the properties, I have established that the rights were created in a manner consistent with the legal advice provided by the Law Officers' Department. There appear to be questions concerning the value of the bonds however.

81. Since the deferred rights to consideration entitle the States to receive a fixed proportion of any consideration received for onward sale of the properties, the seller of the properties would only receive 65% of any consideration. Consequently sellers wishing to purchase another property might expect to encounter some difficulty in arranging finance. This would tend to discourage owners from selling properties and thus increase the likelihood that title to the properties would pass not by sale but by inheritance.

82. In this connection, the Housing Sub-Panel's letter dated 18 September 2008 records that:

"As you know, another of the Sub-Panel's concerns related to the possibility for unfair treatment of family members who may inherit the property from the initial purchaser in due course. It is understood that the scheme will require repayment of the 35% discount at the (first time buyer) market value pertaining at the time.

²⁹ One sale was recorded in September 2008, thirteen in October 2008, two in December 2008, one in January 2009, three in February 2009, one in April 2009 and one in May 2009.

³⁰ The implication of the changing the assumed market value is that the proportion of the deferred payment would be correspondingly lower and this would reduce the proportion of any eventual capital profit that a purchaser would have to pay to the States on subsequent sale. This is no mere academic consideration.

However, members were reassured to hear that discretion may be applied by the Minister for Planning and Environment in individual cases in respect of the ability for heirs to occupy inherited family homes where first time buyer restrictions might otherwise preclude this."

83. The Minister's comment was presumably a response to the Sub-Panel's concern which was expressed by them in the following way:

"Questions arise concerning the effect of ownership conditions under Jersey Homebuy in the event of marriage or partnership break-up, or the death of a partner or parent. The first time buyer requirement applied 'in perpetuity' could impact most unfairly on potential heirs who could find themselves legally prevented from occupying a family home."³¹

84. In effect, the Minister's response acknowledged a doubt that in certain circumstances there might be grounds for not insisting upon immediate payment of the deferred sum due under the bond and thus raised questions about the value of the bonds.

Proper consideration – proportions

85. The proposed 'Jersey Homebuy' policy envisaged that the discounted cash element of the consideration payable by purchasers would be 35% of first time buyer value.³²

86. I have checked the minutes of the two meetings of the working group established by the Planning and Environment Minister and cannot find that there was any discussion of varying this rate of discount. Indeed the minutes of the working group's meeting on 15 August 2008 include a schedule of proposed prices which shows the 'Current Full FTB Selling Price' discounted by 35%.³³ In other words, there appears to have been no discussion, or approval, of any variation in the proposal that the rate of discount should be 35%.

87. As I have shown, the Assistant Housing Minister's statement on 26 April 2009 indicated that the rate of discount for the proposed transactions would be 42% overall.

³¹ Paper prepared on 11 September 2008.

³² Appendix 2 of P74/2008: paragraph A2.3.

³³ The schedule is marked: 'this schedule is valid only for Aug 6 2008'. The total first time buyer value of the properties listed was £20,918,000 and the discounted value was £13,597,025 (i.e. 65%).

88. I can find no justification for believing that this rate of discount was within the proposed policy as published and discussed with the working group established by the Planning and Environment Minister³⁴.
89. Nor have I been able to find any justification for believing that this rate of discount was within the proposed policy as published and discussed with the Housing Scrutiny Sub-Panel.
90. The effect of this increase in the discount was to reduce the amount of the immediate cash payment and to increase the deferred payment due under the second charges on the properties. I recognise that the need to change the proportion of the deferred payment was created by the change in banking criteria to which I have already referred. This change in banking practice raised questions firstly about the financial assumptions on which the proposed Jersey Homebuy scheme had been based but secondly about whether the properties at La Providence were suitable for inclusion in the Jersey Homebuy scheme.
91. It has been suggested to me that the increase in the discount rate was consistent with the statement made to the States that:

*"I believe that initially the discount off the full value should be 35 per cent."*³⁵

92. The Housing Department has suggested to me that this statement implied that different discount rates could be considered and might be appropriate. Having considered this matter carefully, I do not agree with the Housing Department's suggestion. It seems to me that the Minister's statement suggested that the initial Homebuy transactions would be based on a discount of 35%.
93. The Housing Department has also suggested to me that the Homebuy transactions were disclosed to the States in the normal manner,³⁶ that the disclosure included disclosure that the rate of discount had been increased and that States members had an

³⁴ In reaching this view I have considered whether the recent fall in market value might have been taken into account. In my view, an equitable approach to reflecting the fall in market value would have required reduction in the overall price not simply the proportion of the value to be paid in cash on purchase. I note that the Housing Department do not accept that there was a fall in prices.

³⁵ Speech of the Minister for Planning and Environment in presenting the proposition on 10 July 2008.

³⁶ In RC68/2009.

opportunity to object to the transactions (and thus the higher rate of discount) at that stage. In fact, no objections were raised.

94. It is indeed the case that the transactions were reported to the States as suggested by the Housing Department. It is also the case that the rate of discount applied in each property sale was disclosed. It is not however the case that the disclosure reported that the rate of discount was inconsistent with the policy as it was submitted to the States for approval so that States members could not easily have identified this fact and considered whether to object.³⁷

Proper consideration - conclusions

95. In short, the assumed discount and thus the cash consideration payable on the transactions were not consistent with the proposed policy.

³⁷ The report presented to the States (RC68/2009) included the following reference: 'Further information on this decision can be found on www.gov.je under Ministerial Decisions/Treasury and resources/Property Holdings (reference MD-PH-2009-0035). The report attached to this Ministerial Decision included a report to the Housing Minister from the Housing Department which justified the increase in the rate of discount in the following terms: 'When the Homebuy scheme was approved it was anticipated that to make homes affordable a 35% deferred payment would be appropriate on these initial sites . . . However, we are now in very different, almost unprecedented economic times. One consequence of these times has been a significant tightening of lending criteria which has significantly reduced the availability of funding and lenders are now being more prudent in the multiples of income which they are willing to advance. In practice 5 times joint income is now very much the upper limit where 12 months ago higher multiples were quite common.'

Were the properties bought at an appropriate price?

Introduction

96. Since the properties were bought for the price at which they were subsequently sold, and this price was based upon a professional valuation it might seem tempting to assume that the States had bought the properties at an appropriate price.
97. However, the States' policy with regard to development would have obliged the developer to sell a proportion of the estate at La Providence to the Public, a Parish or a Housing Trust for rental purposes. I understand that the purchase by the States of 46 properties at La Providence was regarded as discharging the developer's obligation in this respect.³⁸
98. Had these properties been bought for social rental purposes, the price paid would have been expected to be based on the properties' social rented value: a value based on the expected net social rental yield.
99. I have not seen a formal valuation of the social rented value for the properties at La Providence, but have been given to understand that the value would reasonably have been expected to be materially less than the value at which the properties were acquired by the States for sale under the proposed 'Jersey Homebuy' scheme. If this difference were estimated conservatively to be £50,000 in respect of each property (on average) the total difference in respect of the properties at La Providence was £2.3 million.³⁹
100. It has been put to me that the legal advice available to the Planning and Environment Department suggested that it would be necessary to pay appropriate compensation for the properties to be sold under the proposed Jersey Homebuy scheme and that payments on the basis of social rented value would not represent appropriate compensation.

³⁸ Indeed the original Planning Obligation Agreement (POA) in respect of La Providence (which was prepared in May 2007) referred to the social housing obligation but envisaged that this obligation would be replaced with a reference to shared equity homes once the States had approved the amendment to Policy H1 of the Island Plan (which occurred in July 2008). The POA for the La Providence site was then revised in July 2009 (after the development had taken place).

³⁹ I note that the earliest suggestion that I have found that it should have been possible for the States to agree these transactions on the basis of a lower price was made in a Law Officers' Department Briefing Note dated 6 July 2009: Having reviewed the circumstances, the Note commented: 'This ought to have put the Public in a strong position to negotiate a competitive price for such a large number of dwellings but this seems not to have happened judging by the agreed sale prices.'

101. I have therefore studied the legal advice in question.⁴⁰ It is certainly the case that the Planning and Environment Department was advised that if a planning permission envisaged that properties should be developed as intermediate housing⁴¹, a requirement that the properties should be transferred to the States for a nominal value would be vulnerable to challenge on the grounds that the compensation was inadequate. The Department was advised that the correct approach would be that the developer would be entitled to receive what the property would fetch on the open market subject not only to the first time buyer restriction but also to the restriction for intermediate housing. Thus the value of the transfer would be on the basis of intermediate housing value.

102. Understandably, the legal advice does not attempt to define 'intermediate housing value' although it assumes that the intermediate housing value would be higher than social rented value. The legal advice was also subject to a general reservation that the legal position was uncertain and that the only way of making perfectly certain that the scheme would be workable would be to introduce it by legislation.

103. The absence of a definition of 'intermediate housing value' leaves open the question of how it is to be determined in any particular case. There are a number of ways in which this could be done. for example:

- (1) the scheme rules could require that an independent professional valuation could be obtained in every case, or
- (2) the detailed specification of the scheme could prescribe a formula to be applied in each case.

104. In this particular instance, the basis for any valuation and the method of obtaining it had not been defined in rules for the scheme (or discussed with consultees in advance). In the event, as far as I have been able to discover, the Housing Department did not seek a professional valuation of the 'intermediate housing value' of the properties at La Providence. As a result, I have not been able to discover how the Housing Department

⁴⁰ I do not claim however to be a lawyer.

⁴¹ i.e. first time buyer properties which are sold on terms which require payment of part of the purchase price when the property is sold and payment of the balance, plus any proportionate uplift, on the happening of a trigger event.

settled the prices at which the properties were transferred save that the Assistant Minister's press release⁴² referred to:

' . . . negotiations with the developer Dandara Ltd.'

Purchase consideration - conclusion

105. I have not been able to establish that the States bought the properties at La Providence at an appropriate market price.

106. However, as will be seen in the following section of this report, the Director of Jersey Property Holdings took the view that the transactions did not represent a financial risk to the Public of the Island.

⁴² 26 April 2009.

SECTION EIGHT – JERSEY HOMEBUY - APPROVALS

Introduction

107. In this section of the report I will consider the approvals for the various transactions necessary for the sale of the 46 properties at La Providence.

Ministerial Decisions 28 May 2009 and 11 June 2009⁴³

108. On 28 May 2009, by approving a formal Ministerial Decision, the Housing Minister approved the acquisition and sale of 46 homes at La Providence. The total consideration for the acquisition of the 46 homes was stated to be £12.005 million. The consideration for the sale was to be £12.005 million with entitlement to receive a further £8.530 million in total being registered as second charges in favour of the public against the 46 homes.

109. The decision requested that the Minister for Treasury and Resources should accept the recommendation for the transactions in accordance with the provisions of Standing Order 168 and authorise the Greffier and Attorney General to sign the necessary contracts on behalf of the Public. The resource implications of the decision were stated to be the eventual return to the public of £8.53 million when the homes were next conveyed.

110. This Decision was subsequently confirmed on 11 June 2009 which incorporated a number of detailed changes requested by the Treasury & Resources Department.

⁴³ MD-H-2009-0049 and MD-H-2009-0055.

Ministerial Decision 18 June 2009⁴⁴

111. Under the States' Standing Order 168, the prior approval of the States is not required for certain transactions:

- "(1) This standing order applies to the following actions –*
- (a) the disposal, acquisition, letting or rental of land on behalf of the public of Jersey; . . .*
- (2) The prior agreement of the States shall not be needed for any of the actions if -*
- (a) the action is recommended by a body established by the States to manage land and buildings owned by the Public of Jersey; and*
- (b) the recommendation is accepted by the Minister for Treasury and Resources.*
- (3) The Minister for Treasury and Resources must, at least 15 working days before any binding arrangement is made for the disposal, acquisition, letting or rental of land on behalf of the public of Jersey which does not, by virtue of paragraph (2), require the prior agreement of the States, present to the States a document setting out the recommendation which he or she has accepted . . ."*

112. The Minister for Treasury and Resources (the Minister) had delegated consideration of such matters to Jersey Property Holdings (JPH). On 11 June 2009, JPH passed a report to the Minister seeking approval for the proposed purchase and disposal of the 46 properties at La Providence under cover of a memorandum which, apart from explaining the proposed transactions, included the following paragraphs which referred to the original proposition to the States concerning Jersey Homebuy⁴⁵:

"In the accompanying report and appendices it was stated that the detailed specification for the Homebuy scheme would be set out by the Minister for Planning and Environment and the Minister for Housing in supplementary planning guidance.

The detailed specification of the Jersey Homebuy Scheme, including the requirements to be incorporated with the planning obligation agreement with the developer, will be set out by the Minister for Planning and Environment, in conjunction with the Minister for Housing and supplementary planning guidance. This policy statement will be updated on a regular basis in the light of the results of the latest housing needs survey.

Enquiries by the Director JPH of the Director Planning on 11 June 2009 have revealed that the supplementary planning guidance policy has yet to be put in place.

⁴⁴ MD-PH-2009-0035.

⁴⁵ P74/2008.

It appears that P74/2008 refers to the principles of the Homebuy scheme not the specifics . . .

. . . It would appear that a practical working model for Jersey Homebuy has not yet been presented to the States for approval”.

113. The memorandum concluded:

“JPH considers that the proposed purchase and onward sale of the 46 houses at La Providence is not contrary to the wishes of the States in supporting the principles of Homebuy under P74/2008.

From the information available JPH has concluded that there is as yet no formal approval to a Jersey Homebuy scheme by the States, nor is there a supplementary planning guidance policy in place and that the assurance provided by the Housing Department in respect of both of these matters are not valid.

As such it might also be concluded that the proposed purchase and sale of 46 houses at La Providence has been brought forward under the banner of a Jersey Homebuy scheme as yet which does not formally exist.”

114. The memorandum suggested that there were two options available to the Minister:

- (1) delay approval so that the Scrutiny conditions agreed under P74/2008 had been met and, in particular, that the Homebuy scheme had been brought ‘. . . back to the States as a practical working model as soon as possible’.
- (2) ‘re-present the proposal as a property transaction which, due to timing, has been brought forward before an official Homebuy scheme has been put in place’.

115. The second option was preferred because it avoided a delay implicit in the first option which would have caused understandable distress to the people who were hoping to buy the properties concerned and because:

- “- there is virtually no financial risk to the Public in this transaction, as the Developer is effectively gifting the amount of the discount received by the purchaser to the Public on a deferred basis, the transactions are back-to-back and no warranties are offered by the Public on these properties.*
- the Public stands to gain a windfall sum of £8.5 million (current value) if all deferred payments are realised.*
- this transaction could however be called into question by any States member under the 15 day rule.”*

116. The memorandum made the following recommendations:

“As the Accounting Officer of Property Holdings⁴⁶ I am content to recommend the proposal to acquire and sell 46 properties at La Providence as a property transaction under the terms and conditions proposed.

However, it would appear on further investigation that the assurances⁴⁷ provided by the Housing Department that the department are satisfied that the conditions agreed by the States Assembly P74/2008: namely the establishment of a supplementary planning guidance policy and more importantly the undertaking ‘to bring Jersey Homebuy back to the States as a practical working model as soon as possible’ are not correct as these requirements have not been met.

Therefore, the proposal cannot, in my view, be brought forward as a recommendation under ‘the Homebuy scheme’ as whilst P74.2008 establishes Jersey Homebuy housing as a provision under the definition of category (a) housing for the remainder of H2 housing, the Homebuy scheme as a working model has yet to be sanctioned by the States Assembly.

If it is considered that the purchase and sale of 46 houses at La Providence is effectively ‘the working model’ for the Homebuy scheme, then the proposal should, as agreed under P74/2008, be brought back to the States for approval. It should not be simply approved by the Minister for Treasury and Resources.”

117. Subsequently, the Minister for Treasury and Resources approved the proposed Ministerial Decision but in approving the decision recorded a number of questions and concerns. After questioning the flawed process by which the States’ approval had allegedly been given to the scheme, the nature of the Ministerial Decision (i.e. there was no formal ministerial decision approving Jersey Homebuy as a policy). Noting the absence of the promised supplementary planning guidance, the Minister’s memorandum concluded:

“There are a number of other questions that are in my mind concerning the trial scheme:

- The concept of discount as opposed to real shared equity*
- The choice of the level of percentage (discount or shared equity)*
- The definition of first time buyer which needs to be properly reviewed*
- The operation of the Gateway which seems to be simplistic in just having an income and first time buyer qualification (this is opposed to a proper approach for qualifying purchasers, highlighting and giving key workers or other such individuals preference)*
- The overall view from a planning perspective of the value of each of these affordable housing units to the developer . . .*

⁴⁶ At that time, the Director of JPH.

⁴⁷ The Housing Department denies that such assurances were given.

Notwithstanding these concerns, I think that I am in no position at this stage to not sign the MD from a property holdings point of view. The report clearly states that there is little risk to the States as the States is holding effectively a significant asset (although it probably can't actually ever get any benefit from that) and for all of the foregoing I am going to sign the ministerial decision but with reservation. Herein lies a whole set of issues which need to be looked at if we are to progress this.

I thought it important to document these concerns before signature."

Report to the States

118. On 23 June 2009, the Minister for Treasury and Resources laid before the States the report required by Standing Order 168 of the proposal to acquire and dispose of 46 houses at La Providence.⁴⁸

119. No objections were raised in response to this report and in due course the transactions went ahead as proposed.

⁴⁸ RC68/2009

Observations

120. The following observations appear appropriate.
121. Firstly, the events surrounding the purchase and sale of the properties at La Providence justify the requirement for a central review of all property transactions which it is proposed should be undertaken. It is clear from the documents that the Housing Department together with the Planning and Environment Department had not fully considered all of the issues implicit in the proposed Jersey Homebuy scheme.
122. Secondly, the events demonstrate the weakness of existing arrangements. By the time that the proposed transactions were passed to JPH for consideration, the Jersey Homebuy scheme had been under consideration for a number of months and Island residents had been submitting applications to be considered for participation in the scheme. In any event, by the time that the proposals were passed to JPH for consideration, pressure had grown for the transactions to go ahead. This combined with the flawed process during 2008 ensured that key issues were not properly resolved (for example those listed by the Minister for Treasury and Resources).
123. In this particular case, the problems were exacerbated by a background of argumentative exchanges between the Housing Department and JPH concerning what the Housing Department regarded as unwarranted criticism of the Department's management of housing sales.
124. The effect of the flaws in this process is that the States' central oversight of property transactions is undermined and the Treasury and Resources Minister can on occasion be denied the benefit of timely professional advice and the freedom to make decisions as envisaged by the Standing Order 168 process.

APPENDIX ONE – TERMS OF REFERENCE

1. This review is commissioned in accordance with the powers of the Comptroller & Auditor General as set out in the Public Finance Jersey Law 2005 to take place in the light of:
 - (1) the States' interest in realising the full potential of assets and fixed assets in particular;
 - (2) the need from time to time to dispose of fixed assets; and
 - (3) thus the States' interest in realising the full value of fixed assets on disposal.

2. The purpose of the review is to examine:
 - (1) the process by which fixed assets are identified for sale;
 - (2) the evidence that any disposals were made in accordance with relevant policy;
 - (3) the steps taken to ensure that full market value was achieved on any sale;
 - (4) the evidence for full market value having been realised on disposal; and
 - (5) any other related issues which come to attention in the course of this review.

3. The review will not examine the disposal of assets with insignificant market value.

4. The review will cover the disposal of all assets by all departments of the States, including (but not limited to):
 - (1) Jersey Property Holdings; and
 - (2) Housing Department.

5. The outcome of the review will be a report prepared and published in accordance with the provisions of the Public Finance Jersey Law 2005 and the C&AG's normal practice.

APPENDIX TWO – PEOPLE WHO PROVIDED INFORMATION FOR THE REVIEW

<i>Department</i>	<i>Officer</i>	<i>Position</i>
Housing Department	D Caunce	Director, Sales and Lettings
	I Gallichan	Chief Officer
	C Mavity	Director of Estate Services
Jersey Property Holdings	D Flowers	Director
	J Richardson	Deputy Chief Executive of the Council of Ministers (latterly Accounting Officer of JHP)
Judicial Greffe	A Bihan	Registrar of Deeds
Law Officers' Department	R Aubert	Head of Conveyancing
Planning & Environment Department	A Scate	Chief Officer
States Greffe	M De La Haye	Greffier of the States
	M Orbell	Scrutiny Officer
	K Tremellen-Frost	Scrutiny Manager
Treasury & Resources Department	J Turner	Deputy Treasurer